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THE AMERICAN FEDERATION OF LABOR *

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I. ITS NATURE AND PURPOSE.

Labor organizations are mostly associations of persons banded together by obligations and governed by established rules to protect and secure for laboring persons the highest wage from capital masters. The purposes of the organizations are attained by a kind of diplomacy which sometimes does not shine with the brilliancy characteristic of high minded men. Neither are the means employed always commendable which are designed to bring about the benefits desired by the organizations. Resort should not be made to illegal means even if the rules of the associations provide for strikes, lockout, blacklist, or boycott. A man may refuse to work under certain designated terms if he so chooses and commit no offense by his determination. He has a clear right to work for whom he pleases and endeavor to obtain the best prices for his services. But concerted agreement to attain their ends by strike, or boycott, is obviously unlawful and detrimental to the general public. Conspiracy is only actionable when damage results from compulsory threats, violence, intimidations and strikes, and so universally held in this country and England.

*This is the first article of a series of articles by the author on the subject of "Regulation of Industrial Corporations". The others are to follow in successive issues of the YALE LAW JOURNAL. This article is published at this time to discuss the labor organization in America following an article on Trade Unions and Trade Disputes in English Law, published in the *Columbia Law Review* for November, 1912.

The American Federation of Labor is an organization composed of 1,750,000 adult members. It is divided into 115 national and international unions. These unions are in turn subdivided into local unions, which number now about 28,000. The structure of the organization is such that in each of thirty-eight States these local unions are all united together in a subordinate organization of the American Federation of Labor, known as a State federation, and in each city or large place all the unions belonging to the American Federation of Labor there situated are correlated and united again into an organization known as a city central labor union or council. These number over 630. In addition to the locals that belong to the international unions which thus compose the American Federation of Labor there is another set of locals which are chartered directly by the American Federation of Labor, and they are known as federal labor unions and there are 680 of them.

In a statement before the Committee of Interstate Commerce on January 11, 1912, Mr. Samuel Gompers, President of the American Federation of Labor, said that the association is greatly interested in securing relief from the interpretation placed upon the Sherman anti-trust law, which decision holds that voluntary associations of working people are regarded as combinations in restraint of trade coming under the provisions of the anti-trust law and amenable to its civil and penal provisions. For this reason attempts are made to have Congress amend the Sherman law so as to plainly exempt labor combinations. The anti-trust act, as understood, brings the men and women of labor directly under the civil and penal sections. As a consequence of such interpretation any person or persons who may be injured in their business by reason of the normal and alleged rightful action of working people, such a person or persons so injured may bring suit and recover threefold damages.

The case in point which resulted in the decision was the case of a strike of a number of workmen hatters, located in Danbury, Conn. They had failed to reach an agreement with an employer to adopt the trade rules in regard to wages, hours, conditions of employment—the rules and wages and hours prevailing to the extent of seven-eighths of the trade throughout the country of the workingmen. It meant either securing from the employer an agreement to conform to the wages and rules and standards largely prevailing in the trade, or encountering the antagonism of

the employers who had already adopted those wages and rules by their insisting upon a lower standard and conditions of employment. The strike ensued in order to persuade the employer to come to this general trade agreement. Here the trouble or contention was the establishment of the standard of wages, the hours, and the conditions of the employment of trade. A conspiracy by agreement was proved, although Mr. Gompers says that if there be no agreement between the workers and employers of a collective character there must be some sort of an agreement of an individual character; and the whole history of industry demonstrates that as a result of these individual bargains of the employer with his power of wealth and his ability to dictate terms on the one hand, and the individual workingman without any support of his fellow workers, or the support of any other person or institution on earth on the other, chaos and industrial anarchy obtain particularly in so far as the conditions of the workingman are concerned.

In an editorial of the *American Federationist* in reference to the Hatters' case (*Loewe v. Lawlor*, 208 U. S., 274), Mr. Gompers, who is not a lawyer, comments on the decision as follows:

"No more sweeping, far-reaching, and important decision has ever been issued by the Supreme Court. The Dred Scott decision did not approach this in scope and importance, for it only decreed that any runaway slave could be pursued if he made his escape into a free state and his return compelled, by all the powers of the government, to his owner to a slave State. Any person who assisted in the escape of a slave or who harbored him could be prosecuted before the courts for a criminal offense. That decision involved the few negro slaves who could make good their escape from a slave-holding State. The Civil War annulled the decision of the Supreme Court and freed the slaves. It cost the lives of hundreds of thousands of brave men on both sides and emancipated from chattel slavery 4,000,000 slaves. No man now proudly points to that famous Dred Scott Supreme Court decision. The decision of the Supreme Court in the hatters' case involves every worker and every sympathizer with the ennobling work of the labor movement of our land."

They deny that a boycott was declared against this firm or that this firm's name was published in the "We don't patronize" list of the *American Federationist*, although the evidence tends to show an attempt to restrain trade. No direct reflection is made against the Court who rendered the decision which was so disastrous to

their interests of organized labor. They express confidence in the judges, but, being human, judges are not infallible to error in judgment and the American Federation of Labor protests against the assumption of law making power by the courts. In assuming such functions, which action is not constitutional or justifiable, the American Federation of Labor asserts that courts invade the sphere of the legislative and executive, which action must necessarily result injuriously to the very fabric of this great republic. In the opinion of the American Federation of Labor, the Supreme Court in this and other recent decisions affecting labor tends to revert to medieval procedure, rather than justify the application of legal principles to present the industrial situation. The Supreme Court justices are regarded deficient in knowledge of modern industrial conditions and exercise less sympathy towards the wage workers all understandable by reason of their lifelong environment and association with business and financial men and affairs. Also that their opinion on the rights of hats seems to be greater than the rights of man and their decisions go to unheard, of lengths in punishing workers for the exercise of their rights.

Organized labor is not a trust according to this editorial of the *American Federationist*:

"From its very nature the labor union can not be regarded as a trust, yet the Supreme Court seems not to have considered this vital distinction in arriving at its decision.

"Public opinion is practically unanimous in recognizing the union as one of the most essential means of securing for the workman his rights, protecting him against injustice, and putting him in touch with all the best thought and most advanced movements of ethical forces of civilization.

"The aims and purposes of our labor movement have often been stated before, but will bear brief restatement at this time, when the attempt is being made in many directions to so cripple the activities of our unions that they may be shorn of their usefulness.

"Our unions aim to improve the standard of life, to uproot ignorance, and foster education; to instill character, manhood, and independent spirit among our people; to bring about a recognition of the interdependence of man upon his fellow man. We aim to establish a normal workday, to take the children from the factory and workshop and give them the opportunity of the school, the home, and the playground. In a word, our unions

strive to lighten toil, educate their members, make their homes more cheerful, and in every way contribute an earnest effort toward making life the better worth living. To achieve these praiseworthy ends we believe that all honorable and lawful means are both justifiable and commendable and should receive the sympathetic support of every right-thinking American."

That the Sherman law has been of no importance in restraining or punishing trusts, but instead of fostering good it has been made an instrument of positive mischief and perverted from its original intent. If the union men are deprived of opportunities for self-improvement and held subject to the will of their employers the industrial condition of the country will sink lower than slavery. Whether this is creditable the silent observer can form his own conclusion. But instead of being disheartened by the decision of the Supreme Court they declare that their forces will be cemented more closely by the danger that threatens their combinations.

Before the Senate Committee on Interstate Commerce Mr. Gompers said he thought there was no influence so helpful in raising the standard of American character, independence, sympathy and responsibility as the efforts of the labor organizations to secure better conditions for wageworkers, whether by the introduction of the eight-hour day, or higher standard of living and a fair living wage for workers. That there is not any legislation that Congress can enact that will be so helpful and potent in raising the standard of life, activity, moral responsibility, and better civil and political conditions as legislation giving the workers the freedom of personal activities. He says that the union men will not submit to injustice and they will not be driven out of existence. If you kill the labor, the trade, and trade unions of America, then each laborer will become an irresponsible person and seek redress in his own way. This organization asserts its loyalty because it is founded on the inherent principles of right and justice, for the unions will live and people generally credit them for benefiting toilers by advances in hire and social uplift, but against all this the unions have no right to deprive, either directly or indirectly, any citizen of the free and unrestricted enjoyment of his personal rights.

It is the bold declaration that the organizations of labor can not and do not propose to exist by the suffrance or by the courtesy of any administration. Either they exist as a matter of right or they are an illegal body. If the men of labor do not know their

status in society in the United States then it is urgent for them to employ their minds intelligently and rightfully to ascertain their exact relation to society. Probably when they determine their relative status these organizations which they regard so essential for their well-being and safety may be unessential. All made necessary by reason of the power of wealth, concentration of industry, the tremendous development of machinery and tool improvement on the one hand; with labor performing a given part of the entire product, an infinitesimal part, doing a single thing a thousand times over every day at the same time labor divided, subdivided and specialized so that the laborer is lost from individuality. To hold and protect themselves from slavery they say that the men and women of labor may not do jointly what they may do in the exercise of their individual lawful right is an anomaly. Individual workmen accept conditions as they find them and submit until the conditions become unbearable and they are driven to desperation, then they throw aside their tools and strike, without experience, without the knowledge of how best to conduct themselves, or to secure the relief which they need. At this point the workmen seek through the organizations of labor relief from the lording of the master. If they had never become members of the organization or were antagonistic to the organization they are admitted without question and assistance rendered them as best at hand.

There is nothing better settled than the fact that a combination between individuals to do something which any of them or all of them, acting separately, can innocently do introduces a new element which makes it a grave danger to the public and the law and has been conducted repeatedly. The organization believes fully and argues that "An individual has the right to trade with another or not, as he sees fit, and what is true of one individual is true of another and true of any number; they can individually withdraw their patronage or refuse to trade with another and refuse to work with another, and what one may do any number of men may do and any number of men may agree to do without coming in conflict with any legal principle." Mr. Gompers says that in all the world there is now an unrest among the people and primarily among the working people on account of the present position they occupy in society—their unrequited toil; the attitude of irresponsibility of the employer towards the workers; and the bitter antagonism to any effective attempt on the part of the

workers to protect themselves against aggression and greed, and the failure of employers to realize their responsibilities. They argue a pressing demand to be larger sharers in the product as profit of their labor, which no doubt is overstepping the limitation of their rights and attempting to enter into the lordship of their employer. Because they cannot or have not been permitted to enter this private domain of the employer they become dissatisfied without an apparent right. This so-called unrest takes the form of trade unions to impress the legislators of the inequity of the employers and impregnate and influence the minds of judges to accede to their unconstitutional rights, although the judges have not as yet reached a point of disobeying their oath of allegiance to the Constitution.

This immense and complex organization publishes a magazine, known as the *American Federationist*, of which the president, Mr. Samuel Gompers, is also the official editor; and besides, of these 115 national unions, very many, if not all, publish journals devoted to their interests. Many of the subordinate bodies known as city central labor unions or councils, also publish journals. This vast organization commands almost unlimited funds which, as necessity demands, is generally raised by per capita assessment operating almost automatically. An assessment of a penny apiece produces \$17,500, which reveals a most portentous combination of individuals with immense moral and pecuniary resources. Also the machinery of the organization is finely adapted to raise money, especially by issuing inflammatory appeals for funds whenever the executive council deem such solicitation is necessary to defend some cause or replenish the treasury vaults for the future. To illustrate a method adopted to raise money in the Los Angeles *Times* building explosion case, for the defense of the two McNamaras, a portion of the circular letter is as follows:

Washington, D. C., July 27, 1911.

To all Workers:

For right is right, since God is God,
And right the day must win;
To doubt would be disloyalty,
To falter would be sin.—*Faber*.

From Los Angeles last October came the news that a terrible catastrophe had occurred in that city; that the Los Angeles *Times* Building had been destroyed, with the loss of a number of lives. The first word spoken, even before the flames had completed their destruction, by the emissaries of the *Times*, contained positive

declarations that organized labor was responsible for the disaster. Qualifying statements were conspicuous by their absence. Wide publicity was given; warped and unsupported allegations against the organized workmen of the entire country were featured. Vast sums of money were dangled in the faces of unscrupulous men to fasten the crime upon some member or members of the trades unions. The National Manufacturers' Association, backed by the Erectors' Association, citizens' alliances, detective agencies, and a hostile press, brought their every influence to bear and appropriated every available circumstance to bulwark and fix in the public mind a mental attitude that the charges against organized labor had been proven beyond the peradventure of a doubt.

The organized labor movement believes that the McNamaras are innocent. Upon that belief there devolves upon us another duty. The accused men are workmen, without means of their own to provide a proper defense. The assault is made against organized labor equally with the McNamaras. If we are true to the obligations we have assumed, if it is hoped to forever settle this system of malicious prosecution of the men of labor, our duty is plain.

Funds must be provided to insure a fair and impartial trial. Eminent counsel has been engaged. Arrangements are proceeding that a proper defense may be made. The great need of the hour is money with which to meet the heavy drains incident to the collection of evidence and other necessary expense.

Every man who was connected with the kidnapping of the McNamaras will be prosecuted to the full limit of the law. It is proposed that the interests of organized labor shall be fully protected, and punishment meted out to detective agencies that assume to be superior to the law. The rights of the men of labor must, shall be preserved.

The men of labor, unlike the hostile organizations arrayed against us, have not vast sums of wealth to call upon, but they are imbued with the spirit of justice, and are ever ready to make sacrifice for principle.

The trial of the McNamaras is set to commence on October 11. In the name of justice and humanity all members of our organizations are urgently requested to contribute as liberally as their abilities will permit. All contributions toward the legal defense of the McNamara cases and for the prosecution of the kidnappers should be transmitted as soon as collected to Frank Morrison, 801-809 G Street, N. W., Washington, D. C., who will forward a receipt for every contribution received by him, and after the trials a printed copy of the contributions received, together with the expense incurred, will be mailed to each contributor.

Fraternally,

SAMUEL GOMPERS,

President American Federation of Labor.

Attest: FRANK MORRISON, Secretary.

A moment's reflection will exhibit its power compared to that great and powerful Napoleon when he invaded Russia; he did not have with him 500,000 fighting men all told, although he had perhaps as many more supernumeraries, and something like 500,000 beasts that went along with him, yet the total number of all the animated beings that went with Napoleon into Russia for the purpose of devastating and destroying that great country and conquering it, did not equal that of the adult members of the American Federation of Labor who are bound together by a constitution and by machinery specially constructed so as to enable the whole power of its vast organization to be thrown against any individual whom it pleases to attack. This association is well organized, having an executive council, consisting of the president, Mr. Gompers, Mr. Morrison, its secretary, and eight vice presidents, of whom Mr. John Mitchell has for many years been one, both during the time he was president of the United Mine Workers of America and since, and he still occupies that position. Mr. Mitchell, a gentleman of great intellect and education, expressed his attitude in the following extract of his address delivered in October, 1903, at Chicago:

"What is this right to work? It is commonly assumed in the argument for the non-unionist that every man has a right to work when and where he will, for what wages he will, and under whatever conditions he will. If this were true, it would follow that the unionist would have as much right to make the dismissal of all non-unionists a condition of his work as the non-unionist would have to work at less than union wages. As a matter of fact no man, and still less no woman or child, has even a legal right to work except under certain prescribed conditions, and still less a moral right to do so.

While the unionists have a perfect legal and moral right to refuse to work with non-unionists, it is not always polite to exercise this right, and the demand upon the employer for the complete unionizing of his plant is not always presented in a wise or polite manner. There are many employers who are willing to have their shops unionized who are not willing to appear to be forced into such a position, and there are many workmen who can be persuaded who can not be compelled to become unionists. There should be no demand for the unionization of a shop until all reasonable efforts have been made to secure the allegiance of every employee. It is unwise, moreover, to demand the unionizing of a shop or an industry where there is not sufficient strength to compel it. For every such demand, and prior to every such

demand, there should be months of patient propaganda, and in this, as in every other line of trade union policy, compulsion should not be used until persuasion has completely and signally failed. * * *

"In conclusion, I believe that trade unions have a perfect legal and moral right to exclude non-unionists, but that this right should be exercised with the utmost care, and only after persuasion has been tried and has failed. I also believe that with the growth of trade-unionism in the United States the exclusion of non-unionists will become more complete, although the animosity toward the non-unionist will diminish with the lessening of his power to do evil."

No clear thinking individual can fail to see the exact position of Mr. Mitchell and the purpose they advocate throughout the length and breadth of this country. They have stood and continue to stand for the "closed shop" policy and force it upon the country, backed by a great organization of combined forces.

II. THE CLOSED SHOP AND BOYCOTT.

The closed shop is a system prevailing in factories conducted under a fixed rule that none but union men in good standing shall be employed. It is called the closed shop because its doors are barred against all employees whom the union does not recognize, and it is contrasted with the open shop, where both union and non-union men are employed without discrimination against either. The non-union man may be denied union membership; he may have been suspended or expelled, or he may not desire membership, but in either of these three contingencies, the fact and not the reason that he is non-union is the conclusive disqualification against employment in a closed shop. As the employer can not review the union's adjudication that a man is non-union, and as in most unions, like all secret societies, an applicant for membership must be approved or voted in, and no court or any other authority can review the organization's action in rejecting the applicant, the result is that no man can secure employment in a closed shop except by consent of the union.

The union has certain established principles which must be obeyed by insisting for the closed shop. Employees and unions that are willing to adjust questions are detained from agreements because they regard it as a matter of principle and not for compromise. Every intelligent liberty loving person knows that every

capable man is entitled to equal opportunities in seeking employment. The question whether he is a union or non-union man should not enter. These labor organizations present a policy of discrimination against the non-union man and all who associate themselves with him. The combination and devices adopted by it to compel employees to submit and its antagonistic methods produced to harass established business are all contrary to fundamental principles of American liberty and freedom.

The "open shop" has been continuously the storm center of conflict toward which destination the association has ordered all forces. Their purpose can not be hid from view nor deception practiced upon the general public relative to these intuitions. The "open shop" idea should be upheld believing that any "establishment can not long remain or be successfully operated part union and part non-union." Reduction in wages and profits are traceable to the "open shop", which labor declares is disastrous to industry and that the best interests of the labor movement call for the employment of union workers. In the November issue of the *American Federalist* for 1903 the executive council published a circular which makes plain their purposes on the "open shop", and declaring that the toiling masses, especially the wage earners, can not, must not, and will not surrender one jot of that which they have secured; must organize the unorganized to present a solid phalanx of the grand army of labor in earnest and emphatic protest against judicial usurpation or capitalistic invasion of their rights, attempted no matter by whom or from whatsoever source. This organization of labor has been a most potent factor to establish and maintain wages, improving conditions, bringing light and hope in the homes and lives of workingmen. Their aim is representing the best interest of the working men and women, regardless whether they are members of the organization or not. Forward for better opportunities is their theme, not retraction to the old conditions of squalor, poverty and misery, if old conditions are forced they intend to resist all attempts from all sources and seek protection and their advancement by organization constituted in some method yet to be made known fully. What are the means to be taken to accomplish that purpose? Can the means be ironclad combination against concentrated wealth and greed of employees?

In the Danbury Hatters' case the American Federation of Labor resorted to boycott as a method to obtain protection and

force the closed shop. The concern is one of 178 fur hat manufacturers engaged in that line of business. Of this number all are unionized except twelve hat factories. One of these was the Stetson Company who employed women and children and refused their employees to join the hatters' union. A boycott was instituted on the Stetson brand of hats by the machinery of the organization. It began in Denver, Colorado, when resolutions were adopted to exclude these Stetson hats from the market, if possible, by their methods. The resolutions required all union men not to purchase the non-union product from merchants until such time as the company should be granted the right to use the authorized union label, except whenever a merchant would offer for sale to close out the product on hand. Merchants handling the product were requested to refrain from further purchases, also a fine was placed on any member of the union who purchased a Stetson hat. The war was on for the exclusion of over \$200,000 worth of these hats carried in stock by the merchants.

The demand is for the closed shop. Almost universal hatred exists between union and non-union employers and employees. What cannot be accomplished by solicitation or agreement is attempted by instituting the strike policy, which is usually the first weapon employed to unionize or close a shop. The employer is told, in effect, that if he retains any non-union men in his employ, the substantial part of his working force will quit work in concert, his entire business organization, of foremen, assistant foremen, inspectors and skilled help, will be destroyed and his business paralyzed until such time as he can recognize. Court decisions which condemn such a combination state that if this attitude is aimed at some unskilled or truly undesirable associate, the combination is justified and legal, but the mere fact that a man is non-union affords no excuse for a movement of such coercive power to deprive him of employment. By methods similar to this, non-union workmen have been followed from one position to another and their discharge successively dictated by the same threat addressed to their successive employers. When strikes fail to accomplish the purpose the second degree or boycott is operated on the products of the employer. With the entire membership of nearly 2,000,000 controlling a purchasing power of \$10,000,000, the effect of boycott is soon productive. All other attempts at secret societies or feuds are insignificant compared to the irresistible machinery of disciplined men scattered through the entire country, even into foreign lands.

The boycott is the favorite weapon or "special provision" of forcing concerns into submission. The boycott is regarded by the organization as nothing but an industrial communication. The idea is to isolate the offender until he ceases to do evil and begins to do good. The organization has a committee whose duty it is to attend to and manage this war-making power. The proceedings of the convention of the American Federation of Labor held at Pittsburg, Pa., November 20, 1905, authorizing a boycott, discloses an urgent appeal to the organization to the use of this favorite weapon, illustrated as follows:

"We must recognize the fact that a boycott means war, and to successfully carry on a war we must adopt the tactics that history has shown are most successful in war. The greatest master of war said that 'war was the trade of a barbarian, and that the secret of success was to concentrate all your forces upon one point of the enemy, the weakest if possible.' In view of these facts the committee recommends that the state federations and central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdiction. One would be preferable. If every available means at the command of the state federation and central bodies were concentrated upon one such and kept up until successful, the next on the list would be more easily brought to terms and within a reasonable time none opposed to fair wages, conditions, or hours but would be brought to see the error of their ways and submit to the inevitable. Under the present system our efforts are largely wasted and our ammunition scattered. Let us reduce the boycotts to the lowest possible number and concentrate our efforts upon those, and we feel certain better results will be obtained."

From recent events associated with union labor attention should be centered a moment upon that horrible and unpardonable crime recently disclosed at Los Angeles. If this is an advanced idea instituted secretly to reduce employers to the union way of thinking the statesmen of this country should investigate and determine the real cause of that terrible crime and bend every nerve to remove the cause. If such violence is permitted or acquiesced in by the organization, they are following a wrong course, as any well balanced minded man knows it will bring no relief, but rather tends to weaken support of the general public. Such horrible criminal expression of unrest is a menace to be avoided and requires a limitation placed on its power as a monopoly of capital. Any course employed for the purpose of preventing obnox-

ious concerns from carrying on an interstate business by destroying their means of production, or by destroying the article itself, or by destroying the building used, all for the purpose of intimidating the owners from contracting with the concern avenged, surely needs restraint.

Another method of resource is the use of the union label which brands products for purchase and sale. These labels are the emblems of security and guidance for the union man. He relies upon the American Federation of Labor for supervision in discriminating against non-union articles. The American Federation of Labor publishes what is called a union label gallery, which gives in pictorial form the labels of about 100 trades, all of which have the endorsement of the American Federation of Labor and the powerful machinery of all its branches to support them. In this way these labels become passports to the market which assure wholesaler and retailer that they may safely purchase the goods, while their absence stamps the merchandise as the handiwork of non-union toil, and therefore to be shunned and boycotted or purchased at one's peril.

The United Brotherhood of Carpenters is the most powerful trade organized in the United States, which is a subsidiary of the American Federation of Labor. Its most favorable field of activities is the island of Manhattan, where it has become so effective that practically all the trimwood used in building construction can not be utilized unless produced by union labor. Members of the carpenters' union are forbidden, under penalty of \$10.00, to handle or work upon any materials which come from an open shop, although builders can purchase open shop material at from twenty-five to fifty per cent cheaper than closed shop products. This operates as an oppression upon the citizen disinterested in trade or business. Should a builder attempt to use non-union material a strike is at once called upon the buildings under construction. Delegates are constantly on duty prowling about to detect the use of non-union material and report union workers to headquarters for the imposition of a fine. Thus the carpenters can not, even if willing to handle open shop material, continue for fear of this secret service force overawing them.

With a membership of over 200,000 and the sympathy of other trade unions, it is necessary that a tradesman must be a member to obtain employment. Even membership is uncertain, because his application being presented by friends may be "black-balled,"

and if he is rejected he cannot be admitted by another one of the 2,000 local unions to which he must make application, but he must receive a majority vote of the objecting union and a two-thirds vote of the union to which he makes the second application. Sometimes unions see fit to close their doors to all applicants for a time to prevent increasing membership. At other times applicants are received into membership on condition of payment of large fines as a penalty for "scabbing" before they made application to the union. In all cases, whatever the action of the union to keep a man from employment, expulsion, unjust fines or suspension, the action is made broadcast over the country and no matter where he seeks employment, if in New York or California, he finds his progress barred and difficulties he cannot surmount, except by becoming a member of some union. His freedom to earn a livelihood is taken away from him. He is deprived of the right to sell his services as he pleases to his best advantage by the tyrannical voice of the organized labor combination. This is the very condition assailed by the United States Supreme Court which says that it is ridiculous that the "very idea that one man may be compelled to hold his life or the means of living, or the material right essential to the employment of life at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." In a nation as ours the rights of its working class to secure employment from those who wish to employ them should be protected. The government should be supreme to determine the rights of the man who seeks employment to earn an honest living rather than the power of combined labor organizations who usurp its voice to rule the country.

Under the prevailing conditions of organized labor the general public are sufferers. There is a monopoly of the craft who burden the non-producer by unfair prices. High prices prevail and the cost of living is regulated by the closed shop scheme. Industry and transportation will soon become subject to strikes at the least complaint and the whole country thrown into a condition known as social unrest. The Debs strike of 1893 paralyzed the transportation service of all railroads of Chicago because they handled cars of the boycotted Pullman Company. The strike by one blow destroys valuable organization of skilled help and turns factories into junk heaps and paralyzes the business which requires years to establish. Sometimes business never fully

recovers from the results of strikes. The public should understand the unjust methods practiced and withhold sympathy to support the law and government and vigilantly guard the individual right to employment. Irresponsible associations should be suppressed by proper legislation adapted to obliterate such menacing societies from existence, who do not respect the rights of independent employers and non-union workers, otherwise the socialistic deduction of the principles of domestic government and the greatest achievement of individual rights will swiftly cease to be a constitutional protection.

Strikes, boycotts and illegal practices have caused the labor unions to be excluded from the United States Steel Company mills since the Homestead strike in 1892 and no union labor has been employed since. They are not opposed to union labor but they are opposed to exclusively using union labor. Eighty per cent of blast furnace laborers are foreign labor, which is the cheapest, lowest priced and easiest labor employed in the industry. They are employed twelve hours a day for seven days a week, and if a practical plan could be obtained the twelve-hour plan would be abolished. Much has been said about these long hours of the laborers and the Russell Sage Foundation has published an article entitled "The Steel Workers," an extract, relative to the change that came when the union was destroyed after the Homestead strike, on affecting the temper of the workers, is as follows:

"Under common conditions workingmen are apt to develop common feelings with respect to some of the deeper and more fundamental questions of their lives. This is especially true in a crisis or a peculiarly aggravated state of affairs, when minor differences are forgotten and feeling is keen. This was at Homestead in 1892 when H. C. Frick sent the armed Pinkerton guards to drive the striking workmen off the company premises. It was so in Homestead again in February, 1908, when with the panic at its height and the mills operating on barely one-fourth time, the Carnegie Steel Company cut wages ten to thirty per cent of men who were not, during those months, earning enough to live on. It has been so at different times in the Monongahela Valley in the last decade when men have been discharged and then blacklisted for meeting in a public hall to form an organization.

"Since 1892 a common feeling has been slowly making headway. The lengthening of the working day, the choking of democratic institutions, and the coercive sway of the employers have worked out more than a well-organized industrial machine. The years

from 1892 down are illuminated here and there with flashes of indignation. These have died away and the public has forgotten, but each time the embers have glowed a little redder, a little more surely. Among the many fine workmen that I grew to know in Pittsburg was one whose gentleness of breeding and native courtesy would have marked him in any company. I asked him once how far socialism had progressed in the mill towns. His eye suddenly flashed as he answered, 'Ninety-nine per cent of the men are Socialists, if by that you mean one who hates a capitalist.'

"The steel worker sees on every side evidences of an irresistible power, baffling and intangible. It fixes the condition of his employment; it tells him what wages he may expect to receive and where and when he must work. If he protests, he is either ignored or rebuked. If he talks it over with his fellow workmen, he is likely to be discharged. As a steel worker said to me, the same one quoted above, 'The galling thing about it all is the necessity of accepting in silence any treatment that the corporation may see fit to give. We have no right to independent action, and when we are wronged there is no redress.'"

The destruction of trade unionism appears to be the cardinal principle with trust builders and various other powerful concerns that control the industrial life and existence of wage earners who are alert to this principle and have welded themselves together for defense. These trusts, such as the United States Steel Company, the Tobacco Trusts and the Shoe Machinery Trust, have stabbed industrial liberty in the back and crushed unionism out among large groups of laborers so completely that it is a forlorn task to ever restore the organization to its former place. This formation of these gigantic trusts is undoubtedly brought about by the illegal practices of the labor unions who have been prohibited from forming unions in the shops and that the acts of violence by individuals among them, which have been recently so much commented upon in the press, are really the result of that feeling; that it is true that labor unions are often guilty of foolish and wrong acts, but that is only due to the fact that ignorant men among them get into control. When unwise men are in control they are apt to run rampant and exceed the bounds of their constitutional rights.

III. LEGAL STATUS OF LABOR.

The law of England is well established against combined wrongdoers, and at common law an action of conspiracy will lie where two or more persons in combination design and actually cause

damage to another. Judges and lawyers are generally of the opinion that persons in combination cannot be viewed as individuals.

"It is now well settled that it is a wrongful act for two or more persons to combine together to induce employers to refuse to continue to employ a workman, even though not bound by contract to do so, and this irrespective of whether for a single individual to do this would be actionable or not, on the ground that a conspiracy to injure resulting in damage is of itself a good cause of action. (*Quinn v. Leathem*, 1901, A. C., 495; *Gregory v. Duke of Brunswick*, 1845, 6 M. & G., 953; *Giblan v. National Labourers' Union*, 1903, 2 K. B., 600)."

In the *Slaughterhouse* cases (83 U. S.) Mr. Justice Field quotes from *Live Stock Association v. Crescent City Company* (1 Abbott; 4 U. S., 398) as follows:

It is one of the privileges of every American citizen to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit, without unreasonable regulation or molestation and without being restricted by any of those unjust, oppressive, and odious monopolies or exclusive privileges which have been condemned by all free governments. * * * There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor.

For the preservation, exercise and enjoyment of these rights, the individual citizen as a necessity must be left free to adopt such calling, profession or trade as may seem to him most conducive to that end. Without this right he can not be a free man. The right to choose one's calling is an essential part of that liberty which it is the object of government to protect; and a calling when chosen is a man's property and right. Liberty and property are not protected where these rights are arbitrarily assailed. (By Mr. Justice Bradley. *Slaughterhouse* cases, 83 U. S., 36.)

The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them without let or hindrance except that which is applied to all persons of the same age, sex, and condition is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. * * *

Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the stock market and pro-

duce market and in many other ways. If by legislative enactment they can be carried into the common avocations and callings of life so as to cut off the right of the citizen to choose his avocation, the right to earn his bread by the trade which he has learned, and if there is no constitutional means of putting a check to such enormity, I can only say that it is time the Constitution was still further amended. (*Butchers' Union v. Crescent City*, 111 U. S., 757; 28 L. Ed., 590. See also *Allgeyer v. Louisiana*, 165 U. S., 589; *Booth v. Illinois*, 184 U. S., 425; Lottery cases, 188 U. S., 357.)

In 1886, four years before the Sherman Act appeared upon the statute books, in a criminal proceeding had in the District of Columbia, certain persons, members and officers of the Knights of Labor, were charged with conspiracy under the common law. Their offense consisted of boycotting certain former members of the Musicians' Union, who had failed to pay a fine levied by the union and who were consequently prevented from securing employment by the act of these conspirators. These defendants were tried and convicted before a local magistrate without a jury. They then appealed to the Supreme Court of the United States on the ground that the offense with which they were charged was of so heinous a character that they were constitutionally entitled to a jury trial. In an opinion written by Mr. Justice Harlan (*Callan v. Wilson*, 127 U. S., 540), the offense charged that the boycott was held to be an offense so heinous in character that persons accused of it were entitled to a trial by jury. The great Justice denounced such combinations as follows:

"Without further reference to the authorities, and conceding that there is a class of petty or minor offenses not usually embraced in public criminal statutes and not of the class or grade triable at common law by a jury and which, if committed in this district may, under the authority of Congress, be tried by the Court and without a jury, we are of opinion that the offense with which the appellant is charged does not belong to that class. A conspiracy such as is charged against him and his codefendants is by no means a petty or trivial offense. 'The general rule of the common law,' the Supreme Judicial Court of Massachusetts said in *Commonwealth v. Hunt* (4 Met., 111, 121), 'is that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual.' In *State v. Burnham* (15 N. H., 396, 401) it was held that 'combinations against law or against individuals are always dangerous to the public peace and to public security. To guard against the union

of individuals to effect an unlawful design is not easy, and to detect and punish them is often extremely difficult.' "

The Sherman Act was invoked by Honorable Richard Olney, Attorney General in President Cleveland's second administration, to vanquish the Debs strike at Chicago (U. S., 158, 564). The bill in that case was filed by the United States against the officers of the American Railway Union, which alleged that a labor dispute existed between the Pullman Railway Car Company and its employees; that thereafter the four officers of the railway union combined together with others to compel an adjustment of such dispute by creating a boycott against the cars of the car company; that to make such boycott effective they had already prevented certain of the railroads running out of Chicago from operating their trains; that they asserted that they could and would tie up, paralyze, and break down any and every railroad which did not accede to their demands, and that the purpose and intention of the combination was "to secure unto themselves the entire control of the interstate, industrial, and commercial business in which the population of the city of Chicago and of other communities along the lines of road of said railways are engaged with each other, and to restrain any and all other persons from any independent control or management of such interstate, industrial, or commercial enterprises, save according to the will and with the consent of the defendants."

In an early case, *United States v. Workingmen's Amalgamated Council* (54 Fed. Rep., 994, affirmed by the Circuit Court of Appeals for the Fifth Circuit, 57 Fed. Rep., 85) the United States filed a bill under the Sherman Act in the Circuit Court for the Eastern District of Louisiana, averring the existence of "a gigantic and widespread combination of the members of a multitude of separate organizations for the purpose of restraining the commerce among the several States and with foreign countries", and it was contended that the statute did not refer to combinations of laborers. But the Court granting the injunction, said:

"I think the Congressional debates show that the statute had its origin in the evils of massed capital; but, when the Congress came to formulating the prohibition, which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words: 'Every contract or combination in the form of trust, or otherwise in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal.' The subject had so broadened in the minds of the legislators that

the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor as well as of capital; in fact, all combinations in restraint of commerce without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest and that it includes combinations which are composed of laborers acting in the interests of laborers."

See section of opinion from the case of *Loewe v. Lawlor* (208 U. S., 301), known as the Danbury Hatters, which was reaffirmed by the Supreme Court in the Buck Stove case (219 U. S.):

"Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that 'ever' contract, combination or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and that all these efforts failed, so that the act remained as we have it before us.

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the interest of laborers. * * * It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country in which the Court finds their error and their violation of the statute. One of the intended results of their combined action was the forced stagnation of all the commerce which flowed through New Orleans. This intent and combined action are none the less unlawful because they included in their scope the paralysis of all other business within the city as well.' "

The purpose of the Sherman Act is clear so far as labor unions are concerned. If they use their combined forces to violate the law as it stands on the statute books they surely must suffer the consequences and cannot expect excuse on the grounds of immunity or preference. The American Federation of Labor argues that it should be exempt as it is a combination without capital stock and not conducted for profit, although its prime purpose is to raise the wages of its members. The absurd theory that argues behind every effort to exempt labor organizations from the Sherman Act is that a combination, which has no capital stock and is not conducted for profit, can not successfully restrain trade or menace the freedom of a trader and that the Sherman Act was intended to apply only to combinations of business men engaged in interstate business and undertaking by agreement to control prices, establish monopolies, or unlawfully dominate competitors by the destruction or subjection of competitors. Boycotts, though unaccompanied by violence or intimidation, have been pronounced unlawful in every State of the United States where the question has arisen, unless it be in Minnesota; and they are held to be unlawful in England.

Legislation has been sought favorable to organized labor in the last Congress by an effort to compel the Clayton anti-injunction bill to become a law. The bill has passed the House and now awaits its passage by the Senate. Many of the points of the Clayton anti-injunction bill have been embodied in a new rule incorporated into practice by the Supreme Court as announced by Chief Justice White on November 4, 1912, for changes in the equity rules in Federal tribunals effective February 1, 1913. This new rule on injunctions is one of the points of legislation organized labor has been fighting to obtain and which they declare will accede to their benefit. The new rule provides that, "No preliminary injunction shall be granted without notice to the opposite party, nor shall any temporary restraining order be

granted without notice to the opposite party, unless it shall clearly appear from specific facts shown by affidavit, or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order, and shall take precedence of all matters, except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so, the Court shall dissolve his temporary restraining order."

At this moment the dignity of the American Federation of Labor is apt to be shattered by court procedure. The officials are now under sentence of imprisonment pending appeal in the Buck Stove and Range Company Case, the outcome of which is awaited with the keenest interest, especially in capital and labor circles. Although limitations of trade unions are established in England, no doubt the time is not far distant when their position will be clearly determined in this country. The new rules of the Supreme Court restricting injunctions may prove beneficial to organized labor and tend to make both capital and labor respect each other's individual and constitutional rights.

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